IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 118 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDUBHAI CHHOTUBHAI PATEL

Versus

SUPERINTENDENT OF CUSTOMS

Appearance:

1. Criminal Revision Application No. 118 of 1995

MR JB PARDIWALA for Petitioner No. 1

MR ANANT S DAVE for Respondent No. 1

MR JD AJMERA for Respondent No. 1

Ms Nandini V Joshi, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/01/2003

ORAL JUDGEMENT

This is a revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 12.1.1995 recorded by the learned Addl. Sessions Judge, Valsad at Valsad in Criminal Appeal No.21/94, under which the learned Judge dismissed the appeal of the present applicant challenging the order dated 21.1.1994 recorded below application Exh.20 in Customs Case No.2/92 by the learned Addl.Chief Judicial Magistrate, Valsad at Valsad directing the present petitioner to pay an amount of surety bond in a sum of Rs. 75,000/-.

2. It seems that the present petitioner stood as surety for his brother, original accused in the aforesaid Criminal Customs Case in a sum of Rs.75,000/-. The learned Addl.Chief Judicial Magistrate appears to have enlarged the said accused on bail on conditions stated at page no.16. One of the conditions was that the said accused was not permitted to leave Valsad District without previous permission of the Court. It was further directed that the said accused Dhirubhai Chhotubhai Patel should deposit his passport before the said Court. The said accused was also required to mark his presence in the office of the Customs Collector at Valsad on every Monday.

3. It seems that thereafter, it was made clear that the passport of the said accused was with the said department and the learned APP appearing for the State had undertaken on 5.4.1991 that the passport will not be handed over to Dhirubhai Chhotubhai Patel without permission of the Court. It seems that despite the said position, the passport was handed over to the said accused and thereafter the accused appears to have left India in order to go to USA. Thereafter the present applicant made an application to the Court concerned stating that the said accused had run away to America and that the accused had gone to America since the passport was handed over to him contrary to the undertaking given to the court. That in view of the above position, the bail bonds may be cancelled and he may be relieved from the responsibilities of the bail bonds. After hearing the applicant and the State, the trial court found that the accused had committed violation of the condition of bail bonds and, therefore, the bail bonds should stood forfeited and the bail amount of Rs.75,000/- be recovered from the present petitioner.

4. Feeling aggrieved by the said order of the trial court, the petitioner preferred criminal appeal before the Sessions Court at Valsad being Criminal Appeal

no.21/94. After hearing the parties, the learned Addl.Sessions Judge found that there was no case made out for interference and, therefore, the appeal was dismissed. Feeling aggrieved by the said judgment and order of the learned Addl. Sessions Judge, Valsad, the present petitioner has filed this revision application before this Court.

5. It has been mainly contended here that the passport was handed over to the original accused in violation of the undertaking given by the learned APP and, therefore, on account of the said action or inaction on the part of the Customs Department, the original accused could run away from the territory of India. It is, therefore, submitted that there was no fault on the part of the applicant and, therefore, the present petitioner should be absolved from the liability of payment of the amount of surety bond.

6. In fact, this argument was advanced before the appellate court also. The said Court and had referred to a decision in the case of State of Maharashtra v.Dadamiya Babumiya Shaikh, reported in (1972) 3 SCC 1985. The pertinent observations made in the said judgment of the Hon'ble Apex Court can be gathered at page 43 which are reproduced hereunder:

> "A surety bond is a contract and it is a question as to how far its terms can be considered to have been varied by any unilateral act. Each bond, has to be construed on its own terms. But in construing the terms of a surety bond for the production of an accused person, the purpose and object of executing it must be kept in view. Such a bond is executed for the purpose of ensuring the presence of the accused concerned in court in which he is standing his trial for a criminal offence at the hearing of the case. But for the execution of such a bond, the accused would have to remain in custody so that the trial may proceed smoothly."

Now it is a matter of record that there was bail bond executed by the present applicant in favour of the State, that in case of violation of terms of conditions of the bail bond, he would pay Rs. 75,000/- to the State. It is a fact that the original accused did not turn up for a long time. It is also a fact that the concerned accused persons committed violation of the condition that he should not leave the territory of Valsad District. It is also a fact that he was required to mark his presence

regularly before the Customs Department. These conditions has also been violated by the said accused. Therefore, when the conditions have been violated, the bail bond stands forfeited and consequently, on the one hand the accused will be responsible to pay Rs.75,000/to the State and same way, the surety would also be liable to pay the said amount to the State. Simply because the Customs Department parted with the passport of the original accused in his favour, it would not absolve the present applicant from his obligation arising out of the bail bond executed by him pursuant to the order of the court below.

7. It some times happens that there would be transfer of officer in different departments and the officer decided to hand over the passport to the original accused, may not have any idea about the order of the court and about the undertaking given by the APP. Sometimes, such officer might not have been conveyed the order or that he may have joined hands with the original accused. The department should not suffer on account of the mischief on the part of its officers. Therefore, simply because the passport was handed over by somebody from the office of the Customs Department to the original accused, it would not absolve the present applicant from the liability of payment of surety amount to the State in accordance with the terms and conditions of the bail bond executed by him pursuant to the order of the court below. The trial court as well as the appellate court both have considered these aspects in its right perspectives and the said approach of the said court is not found to be illegal and unless the order is found to be illegal, it may not be open to this court to interfere with the said judgments and orders of the two courts below by exercising its revisional jurisdiction.

8. In other words, the judgments and orders of the two courts below are not found to be illegal and perverse and, therefore, no interference is required to be made.

9. For the foregoing reasons, this revision application is without any merit and it deserves to be dismissed. The Revision Application is dismissed accordingly. Rule is discharged.

29.1.2003 [D P Buch, J.]
msp